

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

**ELECTRICAL WORKERS  
PENSION FUND, LOCAL 103,  
I.B.E.W., Derivatively on Behalf of  
AMERICAN GREETINGS  
CORPORATION**

**: Case No. 09-CV-0875**

**Plaintiffs,**

**:**

**: JUDGE KATHLEEN O'MALLEY**

**v.**

**:**

**MORRY WEISS, *et al.***

**: ORDER**

**Defendants.**

**:**

**-and-**

**AMERICAN GREETINGS  
CORPORATION,**

**Nominal Defendant.**

Before the Court is a Motion to Remand (Doc. 8) filed by the Plaintiffs, Electrical Workers Pension Fund, Local 103, I.B.E.W. ("Local 103"). The Defendants, Morry Weiss, *et al.* ("the Defendants"), have filed a brief in response (Doc. 13), and Local 103 has filed a reply brief (Doc. 15). The case was referred to Magistrate Judge Nancy A. Vecchiarelli ("Judge Vecchiarelli") on December 14, 2009, pursuant to 28 U.S.C. § 636 (Doc. 21). On January 28, 2010, Judge Vecchiarelli submitted her Report and Recommendation ("R&R") to the Court, which recommended that Local 103's Motion to Remand be granted. (Doc. 22). Judge Vecchiarelli's R&R explained that the parties had fourteen days to object to the R&R and that a failure to object may waive any right to appeal. For the reasons articulated below, the Court adopts the R&R and **GRANTS** Local 103's Motion to Remand (Doc. 8).

The fourteen-day time limit for filing objections, pursuant to Local Rule 72.3, has passed, and the Defendants have not filed any objections to the R&R. “Failure to object to an adverse magistrate’s report and recommendation, after being advised of the consequences, constitutes a waiver of further appellate review.” *Smith v. Franklin*, 872 F.2d 1028 (6th Cir. 1989) (unpublished) (citing *Thomas v. Arn*, 474 U.S. 140 (1985)); *see also Javaherpour v. United States*, 315 Fed. Appx. 505, 508 (6th Cir. 2009) (“[A] party must file timely objections with the district court to avoid waiving appellate review.” (citing *United States v. Walters*, 638 F.2d 947, 949-50 (6th Cir. 1981))). Indeed:

In *Thomas v. Arn*, 474 U.S. 140, 106 S. Ct. 466, 471, 88 L. Ed. 2d 435 (1985), the United States Supreme Court specifically upheld [the Sixth Circuit’s] rule conditioning the right to appeal a district court’s order on the filing of specific objections to the magistrate’s report and recommendation. The Court noted that “the Sixth Circuit rule, by precluding appellate review of any issue not contained in objections, prevents a litigant from ‘sandbagging’ the district judge by failing to object and then appealing.” *Id.*

*Wilson v. McMacken*, 786 F.2d 216, 220 (6th Cir. 1986) (discussing a petition for a writ of habeas corpus).

Because the Defendants have not objected to any portion of Judge Vecchiarelli’s R&R recommending that this Court remand this case, it is unnecessary to review the issue further. In any event, the Court accepts the recommendation that this matter be remanded and **ADOPTS** the well-reasoned and thorough analysis of the Magistrate Judge. Accordingly, the Plaintiffs’ Motion to Remand (Doc. 8) is **GRANTED**, and this case is **REMANDED** to state court.

**IT IS SO ORDERED.**

**s/Kathleen M. O’Malley**  
**KATHLEEN McDONALD O’MALLEY**  
**UNITED STATES DISTRICT JUDGE**

**Dated: February 17, 2010**